

REMARKS

This is in response to the Office Action mailed on September 8, 2004. In the Office Action, the paragraph 1 of page 1 of the specification was objected to for reference a pending application when that application is now an issued patent. The above amendment addresses the objection, and places the specification in proper form.

In the Office Action, claims 1-3 and 8 were rejected under 35 U.S.C. § 102(b) as being anticipated by Zebrowski (U.S. Patent 5,836,469). Claims 1-6, 8-14, and 16-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (U.S. Patent 4,927,046) in view of Zebrowski. Claims 7, 15, and 22-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Armstrong in view of Zebrowski and further in view of Vaughn (U.S. Patent 3,536,285).

I. 35 U.S.C. § 102(b)

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). The Examiner rejected claims 1-3 and 8 under 35 U.S.C. § 102(b) as being anticipated by Zebrowski

Amended independent claim 1 relates to a method for securing a user's hand to a container. The method comprises providing a container having an outer surface and an inner surface, wherein the inner surface defines a cavity having an opening, the container has an inner perimeter of the container measured at about a middle portion of the cavity, the opening being generally at least as large as the inner perimeter,¹ providing a strap having at least one end secured to the outer surface of the container, the strap being mounted relative to the container to permit elastic movement of at least a portion of the strap toward and away from the container, and inserting the hand between the strap and the outer surface of the container

¹The Applicants note that, in at least one embodiment, the opening is not necessarily defined by the upper rim section 41 of the container. (See p. 7, ll. 19-20, p. 9, ll. 8-10, and p. 10, ll. 19-20; see also, e.g., FIGS. 1 and 3). Moreover, in another embodiment, the top portion 52 acts as a lid, which is not necessarily the opening of the container. (p. 12, ll. 9-11). An opening in a lid is distinguishable from an opening in a cavity of the container itself.

to a degree sufficient to move that portion of the strap away from the container, whereby the strap elastically urges the hand against the outer surface of the container.

Zebrowski discloses a bottle with a gripping support. FIG. 7-10 disclose an embodiment of the bottle with a gripping support having a strap 40. The bottle has a main body portion 18 that is generally cylindrical and a top opening 12 with a threaded neck 14 for receiving a closure cap. The bottle has a tapered bottom wall portion 20, a base 22, and a tapered upper body portion 24 extending from the main body to the neck 14. (See Zebrowski, col. 2, ll. 27-32). The bottle is formed of PET material, and the strap 40 is formed of the same PET material. (Zebrowski, col. 2, ll. 24-16, 33-36 and 59-61).

Claim 1 is not anticipated by Zebrowski because Zebrowski does not disclose providing a container having an outer surface and an inner surface, wherein the inner surface defines a cavity having an opening, and that opening is generally at least as large as an inner perimeter of the cavity measured at about a middle portion of the cavity. In Zebrowski, the opening to the container is defined by the neck and not the body portion of the bottle, i.e., at a middle portion of the cavity. The neck and opening of Zebrowski are smaller than the body portion of the bottle. Therefore, Zebrowski does not show, teach or disclose the opening of the container being at least as large as an inner perimeter of the cavity.

In addition, Zebrowski does not show, teach or disclose a handle or strap that elastically urges a hand toward the container. Rather, Zebrowski discloses a cylindrical thin bottle wall providing gripping support against the handle or strap, which is not the same as urging the hand toward the container. (Zebrowski, col. 2, ll. 55-65). This is due, at least in part, to the fact that Zebrowski does not show, teach or disclose any elasticity in components involved with the gripping of the bottle with the strap 40.

Each and every element of claim 1 is not disclosed by Zebrowski. Therefore, claim 1 is not anticipated by Zebrowski.

Amended independent claim 2 relates to a method of holding a fluid. The method comprises providing a container having a bottom end and a sidewall extending from the bottom end to define a main body, the container having a rim located at an upper perimeter of an opening defined by the main body of the container, providing a supportive strap having a first end and a second end with the first end secured to the container, the supportive strap being at least partially elastic and extending along but outwardly spaced from the sidewall to form a pocket between the supportive strap and the sidewall, inserting an appendage through the pocket wherein the supportive strap elastically urges the appendage against the sidewall, and introducing fluid into the container.

Claim 2 is not anticipated by Zebrowski because Zebrowski does not show, teach or disclose providing a container having a bottom end and a sidewall extending from the bottom end to define a main body, the container having a rim located at an upper perimeter of an opening defined by the main body of the container. In Zebrowski, the opening to the container is at the neck and has a perimeter defined by the neck. There is no rim disclosed in Zebrowski. The closure cap of Zebrowski does not disclose a rim structure. Moreover, the perimeter of the opening of Zebrowski is defined by the neck and not the main body. Therefore, Zebrowski does not show, teach or disclose the rim located at an upper perimeter of an opening defined by the main body.

Each and every element of claim 2 is not disclosed by Zebrowski. Therefore, claim 2 is not anticipated by Zebrowski. Claims 3 and 8 depend from claim 2 and include all of the limitations of claim 2. Therefore, because Zebrowski does not disclose each and every element of claim 2, claims 3 and 8 are also not anticipated by Zebrowski. Cf. MPEP §2143.03.

II. 35 U.S.C. § 103(a)

The Examiner bears the initial burden of factually supporting a *prima facie* conclusion of obviousness. MPEP § 2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. MPEP § 2143.01. Second, there must be a reasonable expectation of success. MPEP § 2143.02. Third, to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCAP 1974); MPEP § 2143.03.

A. Armstrong in view of Zebrowski

The Examiner rejected claims 1-6, 8-14, and 16-21 under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Zebrowski.

As detailed above, amended independent claim 1 relates to a method for securing a user's hand to a container. The method comprises providing a container having an outer surface and an inner surface, wherein the inner surface defines a cavity having an opening, the container has an inner perimeter of the container measured at about a middle portion of the cavity, the opening being generally at least as large as the inner perimeter, providing a strap having at least one end secured to the outer surface of the container, the strap being mounted relative to the container to permit elastic movement of at least a portion of the strap toward and away from the container, and inserting the hand between the strap and the outer surface of the container to a degree sufficient to move that portion of the strap away from the container, whereby the strap elastically urges the hand against the outer surface of the container.

Armstrong discloses a holding vessel with a supportive handle. The vessel has a body 1 and a ledge 5 that is located intermediate (vertically) along one of the walls of the vessel. (Armstrong, FIG. 1). Apart from the ledge 5, the walls of the vessel are generally straight. (Armstrong, FIG. 1). A pistol-grip handle 2 is disclosed, which requires a user to affirmatively grip the vessel to hold it. (Armstrong, col. 4, ll. 23-33; and FIGS. 1 and 5-6).

Zebrowski discloses a bottle with a gripping support. FIGS. 7-10 disclose an embodiment of the bottle with a gripping support having a strap 40. The bottle has a main body portion 18 that is generally cylindrical and a top opening 12 with a threaded neck 14 for receiving a closure cap. The bottle has a tapered bottom wall portion 20, a base 22, and a tapered upper body portion 24 extending from the main body to the neck 14. (See Zebrowski, col. 2, ll. 27-32). The bottle is formed of PET material, and the strap 40 is formed of the same PET material. (Zebrowski, col. 2, ll. 24-16, 33-36 and 59-61).

Claim 1 of the present invention requires the strap to permit resilient movement of at least a portion of the strap toward and away from the container, such as through elastic stretching of at least a portion of the strap. (See, e.g., p. 10, ll. 16-24). Armstrong does not disclose a strap. (9/8/04 Office Action, p. 6). Instead, Armstrong discloses a handle that a user must affirmatively grip. Zebrowski discloses a handle or strap. However, Zebrowski discloses that the "pliant character" of the thin, cylindrical bottle wall provides gripping support. (Zebrowski, col. 2, ll. 55-65). The bottle disclosed by Zebrowski includes a thin, cylindrical side wall, which can produce movement by deformation of the cylindrical shape of the wall. (See Zebrowski, col. 2, ll. 34-39). Distortions of the cylindrical shape of the bottle wall are distinguishable from resilient movement of an elastic portion of the strap. More particularly, the disclosed distortions of the cylindrical shape of the side wall in Zebrowski is primarily a compressive phenomenon, whereas resilient movement due to elastic stretching is primarily a tensile phenomenon. Indeed, the PET material disclosed by Zebrowski is used for both the bottle and the strap 40. PET, though bendable, pliant and deformable, does not possess elastic characteristics. Zebrowski does not show, teach or disclose any elasticity in components involved with the gripping of the bottle with the strap 40.

Thus, Armstrong in view of Zebrowski does not disclose, suggest or render obvious all the limitations of claim 1. Claim 1 is presently in condition for allowance.

As discussed above, amended independent claim 2 relates to a method of holding a fluid. That claim requires that the supportive strap elastically urge the appendage against the sidewall. Armstrong does not disclose a strap, but rather a handle that a user must affirmatively grip. Similar to that discussed above with respect to claim 1, the disclosed distortions of the cylindrical shape of the bottle to provide gripping support in Zebrowski are distinguishable from claim 1 of the present invention, which requires that the strap must elastically urge the appendage against the sidewall.

In addition, claim 2 requires a rim located at an upper perimeter of an opening defined by a main body of the container. In contrast, Armstrong does not disclose a rim. The walls of the vessel disclosed by Armstrong have generally straight walls with an opening defined by an upper perimeter of those walls. No rim at the upper perimeter is disclosed by Armstrong. Rather, a ledge 5 is disposed intermediate (vertically) one of the walls of the vessel.

Zebrowski discloses a bottle having a main body portion and a neck portion, with an opening defined by the neck. However, Zebrowski does not disclose or suggest a rim located at an upper perimeter of an opening. Moreover, Zebrowski does not disclose or suggest an opening defined by the main body portion.

Thus, Armstrong in view of Zebrowski does not disclose, suggest or render obvious all the limitations of claim 2. Claim 2 is presently in condition for allowance.

Amended independent claim 11 relates to a method for applying a coating material. The method of claim 11 comprises providing a container having a bottom end and a sidewall that define a main body, the container having an opening with a perimeter defined by the main body of the container, attaching a strap to the sidewall and bottom end, at least a portion of the strap being elastic, inserting a hand through the strap to engage with the sidewall of the container and the strap, introducing a coating material into the container, providing an applicator tool, inserting the applicator tool into the coating material, and applying the coating material to a surface with the applicator tool.

Armstrong does not disclose a strap. (9/8/04 Office Action, p. 6). Instead, Armstrong discloses a handle that a user must affirmatively grasp. Zebrowski discloses a handle or strap, however, Zebrowski does not disclose or suggest at least a portion of the strap being elastic. Distortions of the cylindrical shape of the bottle of Zebrowski are distinguishable from elastic movement of a portion of the strap, as required by claim 11. More particularly, distortions of the cylindrical shape of the side wall is primarily a compressive phenomenon, whereas elastic movement, such as stretching, is primarily a tensile phenomenon.

Thus, Armstrong in view of Zebrowski does not disclose, suggest or render obvious all the limitations of claim 11. Claim 11 is allowable over the references cited by the Examiner.

Claim 17 relates to a method for applying a fluid from a container to a surface. The method comprises providing an adjustable strap having a first end and a second end, the first end being fixedly attached to the container, the container having inner and outer surfaces, securing the second end of the strap to the container, aligning a user's hand between the strap and the outer surface of the container so that the strap urges the hand against the outer surface of the container and stabilizes the container with respect to movement relative to the hand, pouring fluid into the container, inserting a tool into the fluid in the container, removing the tool from the fluid, and applying the fluid with the tool to the surface.

Armstrong does not disclose a strap, but instead discloses a handle that a user must affirmatively grasp. Zebrowski discloses a handle or strap. However, Zebrowski does not disclose or suggest aligning a user's hand between the strap and the outer surface of the container so that the strap urges the hand against the outer surface of the container and stabilizes the container with respect to movement relative to the hand. As noted previously, the disclosed distortions of the cylindrical shape of the bottle to provide gripping support in Zebrowski are distinguishable from claim 17 of the present invention, which requires that the strap must urge the appendage against the sidewall. Indeed, the mere provision of "gripping support" does not satisfy the limitation of claim 17 that requires that the strap *stabilize* the container with respect to movement relative to the hand.

In addition, the prior art references cited by the examiner do not disclose or suggest an adjustable strap. Armstrong mentions that "[t]he handle is designed with ample room for a man's hand, yet it is comfortable for a smaller hand as well." (Armstrong, col. 3, ll. 4-6). However, that statement does not indicate that adjustability is desired, or how a handle or strap would be made adjustable. In short, the affirmative pistol-grip disclosed in Armstrong does not address the problem of urging a hand against a container. Other holding devices, such as belts, discussed by the Examiner are unrelated to the present invention, and there is no appropriate suggestion in the cited references to combine those teachings with the prior art of record. Moreover, Zebrowski does not teach an adjustable strap, and for good reason. It would be entirely impractical to manufacture Zebrowski's plastic beverage containers that were differently sized for different users. In sum, there is no showing or suggestion in the prior art that makes obvious the use of an adjustable strap as claimed.

Thus, Armstrong in view of Zebrowski does not disclose, suggest or render obvious all the limitations of claim 17. Claim 17 is in condition for allowance.

Claims 3-6 and 8-10 depend from amended independent claim 2, claims 12-14 and 16 depend from amended independent claim 11, and claims 18-21 depend from independent claim 17. Dependent claims that depend from allowable independent claims are also in condition for allowance. MPEP §2143.03. As noted above, independent claims 2, 11 and 17 are in condition for allowance. It is respectfully submitted that claims 3-6, 8-10, 12-14, 16 and 18-21 are patentable in their own rights, but it is unnecessary to elaborate on the allowability of those claims as they depend from allowable base claims. Thus, claims 3-6, 8-10, 12-14, 16 and 18-21 are in condition for allowance.

B. Armstrong in view of Zebrowski and further in view of Vaughn

The Examiner rejected claims 7, 15, and 22-24 under 35 U.S.C. § 103(a) as being unpatentable over Armstrong in view of Zebrowski and further in view of Vaughn.

Vaughn discloses a clamping means for a paint brush. In particular, Vaughn discloses a clamp 12, 52 that can be fit over an edge of a container or paint bucket. The clamp of Vaughn has a magnet 26, 62 for magnetically holding a paint brush 30 to the clamp 12, 52.

Claim 7 depends from amended independent claim 2, and claim 15 depends from amended independent claim 11. Dependent claims that depend from allowable independent claims are also in condition for allowance. MPEP §2143.03. As discussed above, claims 2 and 11 are allowable over Armstrong in view of Zebrowski. The Examiner has not indicated that Vaughn relates to either base claim 2 or 11, and Vaughn in fact does not render those claims obvious. Claims 2 and 11 are therefore in condition for allowance. It is further respectfully submitted that claims 7 and 15 are patentable in their own rights, but it is unnecessary to elaborate on the allowability of those claims as they depend from allowable base claims. Thus, claims 7 and 15 are in condition for allowance.

Amended independent claim 22 relates to a method for holding a fluid. The method comprises providing a container having a bottom end and a sidewall extending from the bottom end, the sidewall has an interior surface and an exterior surface with a magnet affixed to the interior surface of the sidewall, the container has an at least partially inward-facing rim extending substantially around an upper perimeter of the sidewall of the container, providing a supportive strap having a first end and a second end, the first end being secured to the container, the supportive strap being at least partially elastic and extending along but outwardly spaced from the sidewall to form a pocket between the supportive strap and the exterior surface of the sidewall, inserting an appendage through the pocket such that the supportive strap elastically urges the appendage against the exterior surface of the sidewall; introducing fluid into the container, and aligning a fluid applicator tool having a magnetic portion with the magnet so that the magnetic portion of the fluid applicator tool is releasably attached to the magnet to hold the fluid applicator tool within the container.

The disclosures of Armstrong, Zebrowski and Vaughn have been discussed above. An at least partially inward-facing rim extending substantially around an upper perimeter of the sidewall of a container is not disclosed or suggested by Armstrong, Zebrowski or Vaughn. Vaughn does show an *outward-facing* rim disclosed on the container 10, that extends around an entire upper perimeter of the container 10. (Vaughn, FIGS. 3 and 8). No portion of the rim in Vaughn faces inward. However, an exclusively outward-facing rim does not satisfy the limitation of claim 22 requiring an at least partially inward-facing rim.

Thus, Armstrong in view of Zebrowski and further in view of Vaughn does not disclose, suggest or render obvious all the limitations of claim 22. Claim 22 is presently in condition for allowance.

Claims 23 and 24 depend from amended independent claim 22. As discussed above, claim 22 is allowable over the cited art. Dependent claims that depend from allowable independent claims are also in condition for allowance. MPEP §2143.03. It is respectfully submitted that claims 23 and 24 are patentable in their own rights, but it is unnecessary to elaborate on the allowability of those claims as they depend from allowable base claims. Thus, claims 23 and 24 are in condition for allowance.

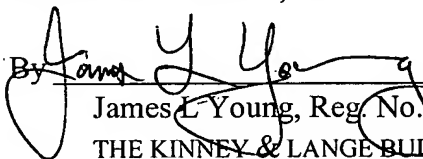
CONCLUSION

Applicants believe that the above amendments and remarks place pending claims 1-24 of this application in condition for allowance. Therefore, Applicants respectfully request notification to that effect.

Respectfully submitted,

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